

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.22582 OF 2006

ORAL ORDER:

The petitioner is a Partnership Firm constituted under a registered partnership deed dated 12.10.2002. It is stated that the deponent – Madunur Venkata Narasimha Raju, and one Smt. Bhavani are the Managing Partners, respondents 4 and 5 herein, being the other partners. It is further stated that the petitioner-firm is carrying on business of contracts of building, road works and etc., and it is an approved contractor with the 1st respondent herein. It is stated that the partnership deed of the petitioner-firm dated 12.10.2002 was approved by the 1st respondent with a condition that if the firm fails to secure any work within a period of three consecutive years, the firm would be removed from the list of approved contractors of the area and to that effect a letter dated 25.11.2002 was issued by the 1st respondent. Subsequently, by letter dated 15.6.2005, the tendering limit of the petitioner-firm was enhanced from Rupees 5 to 15 lakhs, reiterating that failure to secure any works in the 1st respondent-organization within a period of three consecutive years will entail in the removal of the firm from the list of approved contractors of the area.

While so, it appears that certain disputes arose among the partners of the petitioner-firm. It is alleged that the respondents 4 and 5 herein were acting against the interest of the petitioner-firm and started addressing letters to the 1st respondent and other authorities not to allot any work to the petitioner-firm. Consequently, the 1st respondent declined to issue tender schedules to the petitioner-firm without assigning any reasons. In the month of August, 2005, when the 1st respondent issued a tender notice in respect of special repairs to tilling in kitchen and earth room in sailors at INS Kalinga, Visakhapatnam, the petitioner-firm requested to issue tender schedules. The 1st respondent by letter dated 18.8.2005

rejected their request and returned the demand draft submitted by the petitioner towards cost of tender schedule.

The petitioner-firm addressed a letter dated 30.8.2005 requesting all the respondents to inform the reasons for not considering its request. In spite of the same, the respondents 1 to 3 did not consider the request of the petitioner and no reasons were assigned. Hence, this writ petition seeking a direction to respondents 1 to 3 to issue tender documents to the petitioner.

Though notice is served, the respondents 4 and 5 did not choose to appear before this Court.

On behalf of respondents 1 to 3 the Commander Works Engineers, filed a counter-affidavit stating that the 4th respondent addressed a letter stating that there were financial disputes between the partners of the firm and requesting not to issue any tender schedule in the name of the petitioner-firm. It is also stated that since the works which are the subject matter of the tenders floated by the 1st respondent, are time bound defence works, if the said works are delayed on account of internal disputes of the petitioner-firm, it would be against the public interest. Hence, the tender schedules were not issued to the petitioner-firm.

I have heard the learned counsel for both the parties and perused the material on record.

It is not in dispute that the 1st respondent is an Undertaking of the Government of India and the petitioner-firm is one of its enlisted contractors. The material on record also shows that the petitioner-firm is required to secure the works in MES within three years, failing which the firm would be removed from the list of approved contractors of the area.

It is to be noted that the partnership-firm as such is enlisted as a contractor with the 1st respondent. Hence, when the firm, represented by the Managing Partner, who is authorized to represent the firm, sought for tender schedules on payment of prescribed cost of the

same, the respondents 1 to 3 cannot decline to issue tender schedules. It needs no reiteration that the issuance of tender schedules would only enable the petitioner-firm to participate in the tenders and even if the petitioner-firm succeeds, it will not confer any vested right to claim the award of contract. Even at that stage, it is open to the 1st respondent to reject the highest/lowest tender for valid reasons. Hence, even assuming that there are certain disputes among the partners of the petitioner-firm, the respondents 1 to 3 cannot refuse to issue tender schedules merely on a letter addressed by the 4th respondent.

In the circumstances, the writ petition is disposed of with a direction to the respondents 1 to 3 to issue tender documents to the petitioner-firm as and when tenders are floated on payment of requisite charges. No costs.

(G. ROHINI, J.)

25th August, 2006.

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Between:

M/s Vasista Associates, represented by its
Managing Partner – Sri M. Venakta Narasimha Raju. .
Petitioner.

And
The Commander Works Engineers, Station Road,
Visakhapatnam and others. . Respondents.